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MONTANA LEGISLATIVE HISTORY

Chapter 529 Session L 1979
Bill House ____ Senate 482

History and final status sheet x
Introduced bill x
Fiscal note N/A
Third reading bill x
Final version of bill x

House Committee on Judiciary

Hearing date(s)* 3/9
3/16

Executive action (vote) date(s)* 3/16

Comm. Report 3/19

Floor 2nd reading & vote 3/20

Floor 3rd reading & vote 3/23

Senate Committee on Judiciary

Hearing date(s)* 2/16
2/18

Executive action (vote) date(s)* 2/18

Comm. Report

Floor 2nd reading & vote 2/23; 3/28

Floor 3rd reading & vote 2/23; 3/29

Conference or Free Conference Comm. ____ Yes x No

Hearing date(s)* _____

Executive action (vote) date(s)* _____

* Includes minutes, exhibits, roll call, visitors register, and vote sheet if available.

Did this bill originate in an interim committee? ____ Yes x No

Committee _____ Report _____

NOTES: Bill was tabled in committee. On 2/21 the senate voted to remove the bill from committee.

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Compiled by: SJL

Date: 9/9/2016

CHAPTER NO. 529

SENATE BILL NO. 482

INTRODUCED BY B. BROWN

IN THE SENATE

February 12, 1979	Introduced and referred to Committee on Judiciary.
February 21, 1979	On motion ordered printed and placed on second reading.
February 22, 1979	Printed and placed on members' desks.
February 23, 1979	Second reading, do pass as amended.
	Correctly engrossed.
	On motion rules suspended. Bill placed on calendar for third reading this day.
	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 27, 1979	Introduced and referred to Committee on Judiciary.
March 19, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 20, 1979	Second reading, concurred in.
March 23, 1979	Third reading, concurred in as amended.

IN THE SENATE

March 24, 1979	Returned from second house. Concurred in as amended.
March 26, 1979	Second reading, pass consideration until 3-28-79.
March 28, 1979	Second reading, amendments adopted.
March 29, 1979	Third reading, amendments adopted. Sent to enrolling.
	Reported correctly enrolled.

Senate BILL NO. 482

INTRODUCED BY Bob Brown

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR SEIZURE AND FORFEITURE OF CONTROLLED SUBSTANCES AND IMPLEMENTS AND CONVEYANCES USED IN DANGEROUS DRUG VIOLATIONS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definition of controlled substance. As used in [this act], "controlled substance" means any substance designated as a dangerous drug pursuant to [Title 50, chapter 32, parts 1 and 2].

Section 2. Things that are subject to forfeiture. (1) The following are subject to forfeiture:

(a) all controlled substances that have been manufactured, distributed, prepared, cultivated, compounded, processed, or possessed in violation of Title 45, chapter 9;

(b) all money, raw materials, products, and equipment of any kind that are used or intended for use in manufacturing, preparing, cultivating, compounding, processing, delivering, importing, or exporting any controlled substance in violation of Title 45, chapter 9;

(c) all property that is used or intended for use as a container for anything enumerated in subsection (1)(a) or (1)(b);

(d) except as provided in subsection (2), all conveyances, including aircraft, vehicles, and vessels:

(i) which are used or intended for use in unlawfully transporting or in any manner facilitating the transportation of anything enumerated in subsection (1)(a) or (1)(b) for the purpose of sale or receipt of such thing;

(ii) in which a controlled substance is unlawfully kept, deposited, or concealed; or

(iii) in which a controlled substance is unlawfully possessed by an occupant; and

(e) all books, records, and research products and materials, including formulas, microfilm, tapes, and data, that are used or intended for use in violation of Title 45, chapter 9.

(2) (a) No conveyance used by a person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of Title 45, chapter 9.

(b) No conveyance is subject to forfeiture under this section because of any act or omission established by the owner of the conveyance to have been committed or omitted without his knowledge or consent.

(c) A forfeiture of a conveyance encumbered by a bona

INTRODUCED BILL

fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to any violation of Title 45, chapter 9.

Section 3. When property may be seized. (1) A peace officer who has probable cause to make an arrest for a violation of Title 45, chapter 9, probable cause to believe that a conveyance has been used or is intended to be used to unlawfully transport a controlled substance, or probable cause to believe that a conveyance has been used to keep, deposit, or conceal a controlled substance shall seize the conveyance so used or intended to be used or any conveyance in which a controlled substance is unlawfully possessed by an occupant. He shall immediately deliver a conveyance that he seizes to the sheriff of the county in which the seizure is made, to be held as evidence until forfeiture is declared or release ordered.

(2) All property subject to forfeiture under [section 1] may be seized by a peace officer under a search warrant issued by a district court having jurisdiction over the property. Seizure without a warrant may be made if:

(a) the seizure is incident to an arrest or a search under a search warrant issued for another purpose or an inspection under an administrative inspection warrant;

(b) the property subject to seizure has been the subject of a prior judgment in favor of the state in a

criminal proceeding or a forfeiture proceeding based on [this act];

(c) the peace officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) the peace officer has probable cause to believe that the property was used or is intended to be used in violation of Title 45, chapter 9.

Section 4. Summary forfeiture of certain controlled substances. Controlled substances that are possessed, transferred, offered for transfer, manufactured, prepared, cultivated, compounded, or processed in violation of Title 45, chapter 9, and that are seized under the provisions of [this act] are contraband and shall be summarily forfeited to the state. Controlled substances which are seized or come into the possession of the state and the owners of which are unknown are contraband and shall be summarily forfeited to the state.

Section 5. Notice of seizure and intention to institute forfeiture proceedings. A peace officer or an officer of the seizing agency who seizes any property other than controlled substances under the provisions of [this act] shall, within 45 days of the seizure, file a notice of the seizure and intention to institute forfeiture proceedings with the clerk of the district court of the

county in which the seizure occurs, and the clerk shall serve notice thereof on all owners or claimants of the property by one of the following methods:

(1) upon an owner or claimant whose right, title, or interest is of record in the division of motor vehicles, by mailing a copy of the notice by certified or registered mail to the address on the records of the division;

(2) upon an owner or claimant whose name and address are known, by mailing a copy of the notice by certified or registered mail to his last-known address;

(3) upon an owner or claimant whose address in unknown but who is believed to have an interest in the property, by publication in one issue of a newspaper of general circulation in the county where the seizure occurred or, if there is no such newspaper, by publication in one issue of a newspaper of general circulation in an adjoining county.

Section 6. Answer to allegations concerning use of property. Within 20 days after the mailing or publication of the notice, the owner or claimant of the seized property shall file a verified answer to the allegations concerning the use of the property contained in the notice of seizure and intention to institute forfeiture proceedings. No extension of the time for filing the answer may be granted, and failure to answer within 20 days bars the owner or claimant from presenting evidence at any subsequent

evidentiary hearing unless extraordinary circumstances exist.

Section 7. Procedure following answer or expiration of time for answering. (1) If a verified answer to the notice is not filed within 20 days after the mailing or publication of the notice, the court shall hear evidence on the charge of unlawful use of the property and upon motion may order the property forfeited to the state.

(2) If a verified answer is filed within 20 days, the forfeiture proceedings shall be set for hearing without a jury not less than 30 days after the answer is filed. Notice of the hearing shall be given in the manner provided for service of notice of seizure.

Section 8. Proof required or permitted at hearing. (1) At the hearing any owner or claimant who has a verified answer on file may show by competent evidence that the property was not used for the purpose charged.

(2) A claimant of a security interest in the property may prove that his security interest is bona fide and that it was created after a reasonable investigation of the moral responsibility, character, and reputation of the purchaser and without knowledge that the property was being or was to be used for the purpose charged. However, no person who has a lien dependent upon possession for compensation to which he is legally entitled for making repairs or performing

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labor upon, furnishing supplies or materials for, or providing storage, repair, or safekeeping of any property and no person doing business under any law of this state or the United States relating to financial institutions, as defined in 32-6-103, loan companies, or licensed pawnbrokers or regularly engaged in the business of selling the property or of purchasing conditional sales contracts for the property may be required to prove that his security interest was created after a reasonable investigation of the moral responsibility, character, and reputation of the owner, purchaser, or person in possession of the property when it was brought to such person.

Section 9. Disposition of property following hearing. (1) If the court finds that the property was not used for the purpose charged, it shall order the property released to the owner of record as of the date of the seizure.

(2) If the court finds that the property was used for the purpose charged, the property shall be disposed of as follows:

(a) If proper proof of his claim is presented at the hearing by the holder of a security interest, the court shall order the property released to the holder of the security interest if the amount due him is equal to or in excess of the value of the property as of the date of seizure, it being the purpose of [this act] to forfeit only

the right, title, or interest of the owner. If the amount due the holder of the security interest is less than the value of the property, the property must be sold at public auction by the sheriff of the county in which the seizure was made in the same manner provided by law for the sale of property under execution or the state may return the property to the holder of the security interest without proceeding with an auction.

(b) If no claimant exists and the confiscating agency wishes to retain the property for its official use, it may do so. If such property is not to be retained, it must be sold as provided in subsection (2)(a).

(c) If a claimant who has presented proper proof of his claim exists and the confiscating agency wishes to retain the property for its official use, it may do so provided it compensates the claimant in the amount of the security interest outstanding at the time of the seizure.

Section 10. Disposition of proceeds of sale. Whenever property is seized, forfeited, and sold under the provisions of [this act], the net proceeds of the sale must be distributed as follows:

(1) to the holders of security interests who have presented proper proof of their claims, if any, up to the amount of their interests in the property;

(2) the remainder, if any, to the county treasurer of

the county in which the property was seized, for deposit in the county general fund, except as provided in subsection (3);

(3) if the property was seized within the corporate limits of a city or town by a law enforcement agency of that city or town, the remainder, if any, to the city or town treasurer for deposit in the city or town general fund.

-End-

SB 482

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 16, 1979

The fortieth meeting of the Senate Judiciary Committee was called to order in Room 331 of the Capitol Building by Senator Everett R. Lensink on the above date at 9:33 a.m.

ROLL CALL:

All members were present with the exception of Senator Healy, who was excused.

CONSIDERATION OF SENATE BILL 409:

Senator Regan, District 31, gave an explanation of this bill, which is an act to generally revise the law relating to assaults and intentional torts occurring between spouses. She stated that this bill came out of a study dealing with spouse abuse, which the Montana Board of Crime Control funded, and out of which came the book, "A Study of Spouse Battering in Montana". (See copy enclosed) She said that on page 3 of the book that it deals with Montana law and remedies. She felt that the state has an interest and a duty to protect one individual from injury to another, and she did not feel that a marriage license should be a license to batter.

Carol Mitchell, from the State Task Force on Spouse Abuse, and in private practice in Missoula, Montana, stated that the common law of Montana prevents suits between husbands and wives, and parents and children; and she felt that we should abolish that immunity.

Pam Larson, an English teacher from Eastern in Billings, and mother of two sons, age 14 and 15, stated that she and her sons were part of a battering experience. She said that she preferred charges against her husband in behalf of herself and her youngest son, that her former husband was found guilty of assault, that they had extensive medical expenses; and the man was fined $50.00 and released. She stated that she was forced to pay the medical bills for her son because she was his legal representative. She also paid medical expenses for herself.

Sharon McVicker, representing herself, stated that she was a lab technician and when she had been married for approximately one year and when she was four months pregnant, her husband held her against a wall while his 16-year old daughter from a previous marriage, kicked her in the stomach. She said that she did not suffer any more battering until after her child was born; when she was violently shoved through the front door and her right artery was severed and a peripheral nerve damaged. She stated that she incurred medical bills over a six-month period and that she had no protection and she was responsible for the bills. She further stated that after her first operation she suffered two more beatings and that it has been agonizing mentally, physically and emotionally and asked the committee to support the bill.

Leonard Larson, chief deputy from the Secretary of State's office, said that this bill was O.K. with them.

There were no further proponents and no opponents.

Senator Towe moved that on page 1, line 6, strike "15" and insert "20" and on page 1, line 9, and page 2, line 11 and page 5, line 3, strike "15" and insert "20". The motion carried unanimously.

Senator Towe moved that the bill do pass, as amended. The motion carried unanimously.

CONSIDERATION OF SENAT BILL 395:

John Hanson, Commissioner of Campaign Finances and Practices, gave an explanation of this bill, which is an act to revise and clarify the prohibitions against corporate contributions and expenditures in political campaigns.

Janelle Fallon, representing the Montana Chamber of Commerce, gave a statement in support of this bill.

Margaret Davis, representing the League of Women Voters, stated that they were in support of this bill and this was a better bill than SB 112, which made an attempt to clarify but was not adequate.

There were no further proponents and no opponents.

Senator Towe stated that ballot issues are not written into the bill. John Hanson stated that several corporations filed suit on ballot issues.

Senator Turnage stated that there are many business entities other than corporations - there are trusts, foundations, limited partnerships, joint ventures, etc. Mr. Hanson said that they felt that most of those associations were incorporated and the intent was to update the language so that it was readable and to go along with the ruling of the 9th Circuit Court of Appeals for segregation of funds by corporations.

Senator Towe questioned if it was their intent to include or exclude business entities. Mr. Hanson said that it was their intention to do it if it was done before and perhaps they did not look at it close enough.

There were no further questions or comments and the hearing this bill was closed.

CONSIDERATION OF SENATE BILL 482:

Senator Brown gave an explanation of this bill, which is an act to provide for the seizure and forfeiture of controlled substances and implements and conveyances used in dangerous drug

violations. He stated that this was in line with federal law and was an added tool which law enforcement officers use in dealing with the enforcement of dangerous drugs.

Tom Honzel, representing the Association of County Attorneys, proposed an amendment that he felt was needed. He stated that they do not intend to confiscate anybody's car if they have just a small amount of marijuana. He commented that the drug traffic is big business and in Montana it is getting to be big business too. He thought that this might slow it down a little.

Mike McGrath from the Department of Justice made a statement in support of the bill.

There were no further proponents and no opponents.

Senator Turnage questioned what a controlled substance is. Mr. McGrath stated that it was defined in Title 50.

Senator Turnage questioned if this relates only to personal property. Mr. Honzel replied that if they have a piano, they often have a false bottom in it and the drugs are transferred like that.

Senator Towe questioned about the money and Mr. Honzel replied that when there is a drug bust, there is usually an exchange of money going on at the time.

Senator Anderson wondered how long it would take to get an airplane back to an owner if they had seized one. Mr. Honzel stated that there is an exclusion unless they use the lease as a front.

Senator Van Valkenburg stated that the property would be sold and the money put into the general fund but the other alternative is that the law enforcement agencies start building their own armada of cars, planes, etc. Mr. Honzel replied that that is what the Feds do. They use the planes, etc., for drug surveillance. He thought that it would probably depend on the district judge.

Senator Van Valkenburg commented that if the agency wants to retain the conveyance for their official use, that it may.

Senator Towe questioned on section 2, the things that are subject to forfeiture, if this is mandatory or arbitrary. Mr. Honzel said that in section 9, it says that if not used, the court shall order the release and shall dispose of in the manner as follows:

Senator Towe questioned on page 2, line 22, "established by the owner." He felt this made the burden of proof on the owner.

The hearing on this bill closed at 10:48 a.m.

Date 2/16/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Reily, John E. (Jack) (D)			✓

Each Day Attach to Minutes.

SENATE

Please sign & return to Secretary's desk

SENATE Judiciary COMMITTEE

BILL _____ VISITORS' REGISTER DATE 2/4/21

Please note bill no. (check one)

NAME	REPRESENTING	BILL #	SUPPORT	OPPOSE
Gina Van Tuyl	Boys & Girls Clubs of Lincoln	402		
F.H. Bates	Nebraska Chamber	190		✓
Joe Mariotti	" "	420		✓
Jim McDonald	Nat. Coalition for Women Survivors	401	✓	
Dennis Hunter	Bellevue Police	409	✓	
Brandon Kemper	" "	409	✓	
[illegible]	[illegible]	409	✓	
[illegible]	" "	409	✓	
Cassy Bonshaw	Hillsdale Private Nonprofit Schools	409	✓	
[illegible]	[illegible]	409	✓	
[illegible]	[illegible]	409	✓	
[illegible]	[illegible]	409	✓	
[illegible]	[illegible]	409	✓	
[illegible]	[illegible]	409	✓	
[illegible]	[illegible]	409	✓	
[illegible]	[illegible]	409	✓	
[illegible]	[illegible]	409	✓	
[illegible]	[illegible]	409	✓	
[illegible]	[illegible]	409	✓	
Marshall Burt	self	409	✓	
Dennis Jacobs	self	409	✓	
Tom Hoff	County Attorneys	482	✓	

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

Please sign & return to Secretary of Committee

SENATE Business COMMITTEE

BILL SB 409 VISITORS' REGISTER DATE 2/16/09

Please note bill no.

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPPOSE
Elizabeth Mackay	Montana Petroleum Marketers Association	SB 409	✓	
Debbie Barrett	Montana Petroleum Marketers Association	SB 409	✓	
Matt Adkins	Women's Place	SB 409	✓	
Michael Sweet	Yellowstone County Board of Commissioners	SB 409	✓	
Mike Dawson	Montana Petroleum Marketers Association	SB 409	✓	
Al Brown	Self	SB 409	✓	
Jamie Doak	[illegible]	SB 409		
[illegible]	[illegible]	SB 409	✓	
[illegible]	[illegible]	SB 409	✓	
[illegible]	[illegible]	SB 409	✓	
Dave Hoffman	Montana Petroleum Marketers Association	SB 409	✓	
Johnson MacCracken	Self	SB 409	✓	
[illegible]	[illegible]	SB 409	✓	
[illegible]	[illegible]	SB 409		
[illegible]	[illegible]	SB 409	✓	
[illegible]	[illegible]	SB 409	✓	
Carole Bass	Helena Women's Refuge	409	✓	

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 18, 1979

The forty-second meeting of the Senate Judiciary Committee was called to order by Senator Everett R. Lensink at 9:36 a.m. in room 331 of the capitol building on the above date.

ROLL CALL:

All members were present.

DISPOSITION OF SENATE BILL 476:

Joan Mayer from the Legislative Council offered amendments to this bill. Senator Towe moved that the bill be amended on page 11, line 7, by striking the words, "or accept". Senator Turnage suggested an amendment on line 15, page 11, by adding the following language "(2) refusal to take the examination may not be used in any manner whatsoever." Senator Towe moved the amendments offered by Joan Mayer including the extra ones be adopted. The motion carried unanimously.

Senator Turnage moved in Section 15, page 11, line 16, that Section 15 be reinserted. Section 15: "Admissibility of examination or test results and added further: "Providing the results of the examination or test shall not be admitted as evidence in the courts of Montana or in any administrative proceedings." The motion carried with Senator Van Valkenburg, Senator Towe and Senator Healy voting no.

Senator Towe moved that the bill as amended do pass. The motion carried unanimously.

DISPOSITION OF SENATE BILL 221:

Senator Towe moved the amendments offered by the Department of Revenue. The motion carried unanimously. Senator O'Hara moved amendment #1 of amendments offered by Joan Mayer. The motion carried unanimously. Senator Towe moved the bill do pass as amended. The motion carried unanimously.

DISPOSITION OF SENATE BILL 228:

Joan Mayer from the Legislative Council offered some amendments, which in effect would incorporate Senate Bill 223 into this bill. Senator Turnage moved that the bill be amended on page 2, line 11, by striking "shall" and inserting "may". The motion carried unanimously.

DISPOSITION OF SENATE BILL 420:

Senator Turnage moved that this bill do not pass. He withdrew this motion and moved that this bill be tabled. The motion carried with Senators Van Valkenburg, Healy, Anderson and Towe voting no. Senator Turnage moved that a joint resolution be drafted to study this matter during the interim and that this resolution should be directed to the Judiciary Committee. The motion carried unanimously.

DISPOSITION OF SENATE BILL 482:

Joan Mayer from the Legislative Council offered some amendments that had been proposed in connection with this bill, which is an act to provide for seizure and forfeiture of controlled substances and implements and conveyances used in dangerous drug violations. There was a motion to do pass. The motion failed. (See roll call vote.)

Senator Turnage moved that this bill be tabled. The motion carried. Senator Van Valkenburg and Senator Anderson were absent during this vote.

DISPOSITION OF SENATE BILL 301:

Joan Mayer from the Legislative Council offered amendments to this bill, which is an act to generally revise the state laws relating to child abuse, neglect and dependency. (See amendments attached.)

Senator Towe moved amendment #2, 3 and 4. The motion carried unanimously. Senator Towe moved to amend by accepting amendment #5. The motion carried unanimously. Senator Towe moved #16 and this motion carried unanimously.

Senator Towe moved that on page 7, the bill be amended on lines 17, 18, 19 by striking these lines in subsection (2). The motion carried unanimously.

Senator Towe moved that amendment #11 be adopted and further amend by striking everything else in section 6 following that amendment. The motion carried unanimously.

Senator Towe moved that amendment #13 be adopted. The motion carried unanimously.

Senator Towe moved that amendment #14 be adopted. The motion carried unanimously.

Senator Towe moved that amendment #17 be adopted. The motion carried unanimously.

Date 2/12/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.

SENATE

SB 482

1. Page 3.
Following: line 3
Insert: "(d) No conveyance is subject to forfeiture under this section because of the possession of marijuana in an amount less than "

2. Page 5, line 11.
Following: "address"
Strike: "in"
Insert: "is"

* 1. Kilogram or
2. 60 grams or (2 ounces)
3. or compromise

SENATE COMMITTEE JUDICIARY

Date 3/08/79 Bill No. 152 Time 2:10 p.m.

NAME	YES	NO
Lensink, Everett R., Chr. (R)		✓
Olson, S. A., V. Chr. (R)		✓
Turnage, Jean A. (R)		✓
O'Hara, Jesse A. (R)	✓	
Anderson, Mike (R)		✓
Galt, Jack E. (R)	✓	
Towe, Thomas E. (D)		✓
Brown, Steve (D)		✓
Van Valkenburg, Fred (D)		✓
Healy, John E. (Jack) (D)	✓	

Alice Omans
Secretary

Everett R. Lensink
Chairman

Motion: Do pass

(include enough information on motion--put with yellow copy of committee report.)

Forty-Sixth LEGISLATIVE SESSION

COMMITTEE ON Judiciary - Senate

	BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
29.	SB 426	2/9/79	2/12/79	2/12/79	2/12/79					
30	SB 286	2/9/79	2/12/79	2/12/79	2/12/79					
31.	SB 395	2/9/79	2/16/79	2/18/79	2/18/79					
32.	SB 431	2/10/79	2/12/79	2/12/79	2/12/79					
33.	SB 432	2/10/79	2/12/79	2/12/79	2/12/79					
34.	SB 444	2/10/79	2/15/79	2/15/79		2/15/79				
35	SB 454	2/10/79	2/14/79	2/15/79	2/14/79					
36	SB 468	2/12/79	2/12/79	2/12/79			2/12/79			
37	SB 476	2/12/79	2/12/79	2/19/79			2/18/79			
38	SB 482	2/12/79	2/16/79	Tabled 2/18/79						
39	SB 487	2/12/79	2/19/79	Tabled 2/19/79						
40	SB 491	2/12/79	2/12/79	2/19/79	2/19/79					
41.	SB 492	2/13/79	2/19/79	*Placed on 2/19/79						
42.	SB 495	2/13/79	2/19/79	2/19/79			2/18/79			
43.	HB 335	2/13/79	3/2/79	3/2/79				3/2/79		
44.	HB 318	2/13/79	3/19/79	3/19/79				3/19/79		

Use a separate sheet for Senate, House Bills, and Resolutions

That Senate Bill No. 395 do pass. Unanimously passed.

That the Committee rise and report, and beg leave to sit again. (Lockrem, Chairman)

Senator Lensink moved that Senate Bill No. 348 be segregated from the Committee of the Whole Report. Motion carried by the following roll call vote:

Ayes: Aklestad, Anderson, Boylan, B. Brown, Conover, Etchart, Fasbender, Goodover, Hafferman, Hager, Hazelbaker, Himsl, Kolstad, Lensink, Lockrem, Lowe, Manley, Manning, McCallum, Nelson, Olson, Rasmussen, Roskie, Severson, E. Smith, R. Smith, Stephens, Story, Thomas, Turnage, Mr. President.
Total 31

Noes: Blaylock, S. Brown, Dover, Galt, Healy, Jergeson, Mehrens, Peterson, Regan, Ryan, Stimatz, Towe, Van Valkenburg, Watt.
Total 14

Excused: None.
Total 0

Absent or not voting: Graham, Norman, O'Hara, Palmer, Thiessen.
Total 5

Upon motion of Senator Lockrem, duly carried, the foregoing Report of the Committee of the Whole was adopted as amended.

At the request of the President, and without objection, the Senate reverted to Order of Business No. 6.

MOTIONS

Motion was made by Senator Stephens that the rules of the Forty-sixth Legislature be temporarily suspended to allow House Bill No. 415 to be placed on Third Reading for consideration this Legislative Day. Motion carried unanimously.

Upon motion of Senator Jergeson, duly carried, that Senate Bill No. 422 be taken from the Committee on Bills and Journal and be rereferred to Second Reading.

Upon motion of Senator Thiessen, duly carried, that Senate Bill No. 400 be placed after Senate Bill No. 409 on Second Reading this Legislative Day.

Upon motion of Senator Stephens, duly carried, the Senate recessed subject to the Call of the Chair.

Senate recessed at 11:56 a.m.

Senate resumed at 1:30 p.m.

REPORTS OF STANDING COMMITTEES

PRINTING (Dover, Chairman):
Correctly printed and placed on the members' desks - SB 243, SB 271, SB 448. Report adopted.
Correctly engrossed - SB 455, SB 501. Report adopted.

At the request of the President, and without objection, the Senate passed to Order of Business No. 9.

THIRD READING OF BILLS

The following bill having been read three several times, title and history agreed to, was disposed of in the following manner:

House Bill No. 415 was concurred in by the following vote:

Ayes: Aklestad, Anderson, Blaylock, Boylan, B. Brown, S. Brown, Conover, Dover, Etchart, Fasbender, Galt, Goodover, Graham, Hafferman, Hager, Hazelbaker, Himsl, Jergeson, Kolstad, Lensink, Lockrem, Lowe, Manley, Manning, McCallum, Nelson, Norman, Olson, O'Hara, Palmer, Rasmussen, Regan, Roskie, Ryan, Severson, E. Smith, R. Smith, Stephens, Stimatz, Story, Thiessen, Thomas, Towe, Turnage, Van Valkenburg, Watt, Mr. President.
Total 47

Noes: None.
Total 0

Excused: None.
Total 0

Absent or not voting: Healy, Mehrens, Peterson.
Total 3

At the request of the President, and without objection, the Senate reverted to Order of Business No. 6.

MOTIONS

Motion was made by Senator O'Hara that Senate Bill No. 482 be taken from the Committee on Judiciary and be printed and placed on Second Reading. Motion carried. Opposed by Palmer and Towe.

Motion was made by Senator Ryan that Senate Bill No. 424 be taken from the Committee on Highways and Transportation and be printed and placed on Second Reading.

A substitute motion was made by Senator Stephens that the motion of Senator Ryan's be indefinitely postponed. Motion carried by the following roll call vote:

Ayes: Aklestad, Anderson, B. Brown, S. Brown, Dover, Etchart, Galt, Goodover, Hazelbaker, Himsl, Jergeson, Kolstad, Lensink, Lockrem, Lowe, McCallum, Nelson, Olson, Rasmussen, Roskie, Severson, E. Smith, Stephens, Turnage, Mr. President.
Total 25

Noes: Blaylock, Boylan, Conover, Fasbender, Hafferman, Hager, Healy, Manley, Manning, Mehrens, Norman, Palmer, Peterson, Regan, Ryan, R. Smith, Stimatz, Story, Thiessen, Towe, Van Valkenburg, Watt.
Total 22

Excused: None.
Total 0

Absent or not voting: Graham, O'Hara, Thomas.
Total 3

Senator Story moved that Joint Rule No. 11 be temporarily suspended so that Statements of Intent on Senate Bills Nos. 390, 422, 458, 489, and 498 can be attached to the bills on Second Reading. Motion carried by the following roll call vote:

And, as so amended, be indefinitely postponed. Opposed by Blaylock, S. Brown, Conover, Etchart, Fasbender, Hager, Hazelbaker, Himsl, Jergeson, Lockrem, Lowe, Manning, Olson, Rasmussen, Regan, Roskie, Towe, Turnage, Mr. President.

That Senate Bill No. 482 be moved to the bottom of the calendar, following Senate Bill No. 500.

That Senate Bill No. 497 be moved to the bottom of the calendar, following Senate Bill No. 482.

That Senate Bill No. 515 do pass. Unanimously passed.

That Senate Bill No. 500 be moved to the bottom of the calendar, following Senate Bill No. 497.

That Senate Bill No. 482 be amended as follows:

1. Page 1, line 22.
Following: "9"
Insert: "except items used or intended for use in connection with quantities of marijuana in amounts less than 1 kilogram"

2. Page 1, line 23.
Following: "(c)"
Insert: "except as provided in subsection (2)(d),"

3. Page 3, line 4.
Following: line 3
Insert: "(d) No conveyance or container is subject to forfeiture under this section if it was used or intended for use in transporting less than 1 kilogram of marijuana."

And, as so amended, do pass. Opposed by Towe.

That the Committee rise and report, and beg leave to sit again. Opposed by Aklestad, Dover, Etchart, Goodover, Hafferman, Lockrem, Manley, Nelson, Olson, O'Hara, Rasmussen, Roskie, Ryan, Thiessen, Mr. President. (Galt, Chairman)

Upon motion of Senator Galt, duly carried, the foregoing Report of the Committee of the Whole was adopted.

At the request of the President, and without objection, the Senate reverted to Order of Business No. 6.

MOTIONS

Upon motion of Senator Stephens, duly carried, the Senate recessed subject to the Call of the Chair.

Senate recessed at 3:37 p.m.

Senate resumed at 3:49 p.m.

SECOND READING OF BILLS (COMMITTEE OF THE WHOLE)

Senator Galt in the Chair.

Senate resumed. President Mathers in the Chair.

Mr. President: We, your Committee of the Whole, having had under consideration business on Second Reading, recommend as follows:

That Senate Bill No. 497 be amended as follows:

1. Title, lines 6 and 7.
Following: line 5
Strike: lines 6 and 7 in their entirety

2. Page 1, line 25.
Following: line 24
Strike: sections 2 and 3 in their entirety
Renumber: subsequent sections

3. Page 2, line 16.
Following: "~~may~~"
Strike: "shall"
Insert: "may"

4. Page 2, line 18.
Following: "."
Strike: remainder of section 4 in its entirety

5. Page 3, line 12.
Strike: "a year"

6. Page 3, line 20.
Following: "."
Strike: remainder of section 6 in its entirety

7. Page 4, line 19
Strike: "less than $500 or"

8. Page 4, line 20.
Following: line 19
Strike: "$1,000"
Insert: "$500."

9. Page 4, line 20.
Following: "$1,000"
Strike: remainder of subsection 2 and subsection 3 in their entirety
Renumber: subsequent subsections

(Amendments 1 through 9 opposed by Blaylock, S. Brown, Fasbender, Healy, Lensink, Lockrem, Mehrens, Norman, Peterson, Regan, Stimatz, Towe, Van Valkenburg, Watt.)

10. Page 6, line 7.
Strike: "fish and game warden,"

And, as so amended, do pass. Opposed by Himsl, Lowe, Olson, Ryan, Severson, R. Smith, Watt.

That Senate Bill No. 500 be amended as follows:

1. Page 2, line 4 through line 6.
Following: "assets."
Strike: remainder of line 4 through line 6 in their entirety

2. Page 2, line 14.
Following: "33"
Strike: remainder of line 14 through 20

3. Page 2, line 24.
Following: "persons."
Strike: "A"
Insert: "Except as provided under Title 72, MCA, and any other Montana statute, a"

THIRD READING OF BILLS

The following bills having been read three several times, title and history agreed to, were disposed of in the following manner:

Senate Bill No. 515 was passed by the following vote:

Ayes: Aklestad, Anderson, Blaylock, Boylan, B. Brown, S. Brown, Conover, Dover, Etchart, Fasbender, Galt, Goodover, Graham, Hafferman, Hager, Hazelbaker, Healy, Himsl, Jergeson, Lensink, Lockrem, Lowe, Manley, McCallum, Mehrens, Nelson, Norman, Olson, O'Hara, Peterson, Rasmussen, Regan, Roskie, Ryan, Severson, E. Smith, R. Smith, Stephens, Stimatz, Story, Thiessen, Thomas, Towe, Turnage, Van Valkenburg, Watt, Mr. President.
Total 47

Noes: None.
Total 0

Excused: None.
Total 0

Absent or not voting: Kolstad, Manning, Palmer.
Total 3

Senate Bill No. 482 was passed by the following vote:

Ayes: Aklestad, Anderson, Blaylock, Boylan, B. Brown, S. Brown, Conover, Dover, Etchart, Fasbender, Galt, Goodover, Graham, Hafferman, Hager, Hazelbaker, Healy, Himsl, Jergeson, Lensink, Lockrem, Lowe, Manley, McCallum, Mehrens, Nelson, Norman, Olson, O'Hara, Peterson, Rasmussen, Regan, Ryan, Severson, E. Smith, R. Smith, Stephens, Stimatz, Story, Thiessen, Thomas, Towe, Turnage, Van Valkenburg, Watt, Mr. President.
Total 46

Noes: None.
Total 0

Excused: None.
Total 0

Absent or not voting: Kolstad, Manning, Palmer, Roskie.
Total 4

Senate Bill No. 497 was passed by the following vote:

Ayes: Aklestad, Anderson, Blaylock, Boylan, B. Brown, S. Brown, Conover, Dover, Etchart, Fasbender, Galt, Goodover, Graham, Hager, Hazelbaker, Healy, Jergeson, Lensink, Manley, McCallum, Mehrens, Nelson, Norman, O'Hara, Peterson, Rasmussen, Regan, Roskie, E. Smith, Stephens, Stimatz, Story, Thiessen, Thomas, Towe, Turnage, Van Valkenburg, Mr. President.
Total 38

Noes: Hafferman, Himsl, Lockrem, Lowe, Olson, Ryan, Severson, R. Smith, Watt.
Total 9

Excused: None.
Total 0

Absent or not voting: Kolstad, Manning, Palmer.
Total 3

Senate Bill No. 500 was passed by the following vote:

Ayes: Anderson, Blaylock, Boylan, B. Brown, S. Brown, Conover, Dover, Etchart, Fasbender, Galt, Goodover, Graham, Hafferman, Hager, Hazelbaker, Healy, Jergeson, Lensink, Lowe, Manley, McCallum, Mehrens, Norman, O'Hara, Peterson, Rasmussen, Regan, R. Smith, Stephens, Stimatz, Story, Thiessen, Thomas, Towe, Turnage, Van Valkenburg, Watt., Total 37

Noes: Aklestad, Himsl, Lockrem, Nelson, Olson, Roskie, Ryan, Severson, E. Smith, Mr. President.
Total 10

Excused: None.
Total 0

Absent or not voting: Kolstad, Manning, Palmer.
Total 3

Upon motion of Senator Stephens, duly carried, the Senate adjourned at 4:32 p.m. until Tuesday, February 27, at the hour of 3:00 p.m.

WILLIAM L. MATHERS
President of the Senate

DENNIS D. CASEY
Secretary of the Senate

Senate BILL NO. 482

INTRODUCED BY Bob Brown

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR SEIZURE AND FORFEITURE OF CONTROLLED SUBSTANCES AND IMPLEMENTS AND CONVEYANCES USED IN DANGEROUS DRUG VIOLATIONS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definition of controlled substance. As used in [this act], "controlled substance" means any substance designated as a dangerous drug pursuant to [Title 50, chapter 32, parts 1 and 2].

Section 2. Things that are subject to forfeiture. (1) The following are subject to forfeiture:

(a) all controlled substances that have been manufactured, distributed, prepared, cultivated, compounded, processed, or possessed in violation of Title 45, chapter 9;

(b) all money, raw materials, products, and equipment of any kind that are used or intended for use in manufacturing, preparing, cultivating, compounding, processing, delivering, importing, or exporting any controlled substance in violation of Title 45, chapter 9;

(c) all property that is used or intended for use as a container for anything enumerated in subsection (1)(a) or (1)(b);

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(d) except as provided in subsection (2), all conveyances, including aircraft, vehicles, and vessels:

(i) which are used or intended for use in unlawfully transporting or in any manner facilitating the transportation of anything enumerated in subsection (1)(a) or (1)(b) for the purpose of sale or receipt of such thing;

(ii) in which a controlled substance is unlawfully kept, deposited, or concealed; or

(iii) in which a controlled substance is unlawfully possessed by an occupant; and

(e) all books, records, and research products and materials, including formulas, microfilm, tapes, and data, that are used or intended for use in violation of Title 45, chapter 9.

(2) (a) No conveyance used by a person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of Title 45, chapter 9.

(b) No conveyance is subject to forfeiture under this section because of any act or omission established by the owner of the conveyance to have been committed or omitted without his knowledge or consent.

(c) A forfeiture of a conveyance encumbered by a bona

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THIRD READING

fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to any violation of Title 45, chapter 9.

Section 3. When property may be seized. (1) A peace officer who has probable cause to make an arrest for a violation of Title 45, chapter 9, probable cause to believe that a conveyance has been used or is intended to be used to unlawfully transport a controlled substance, or probable cause to believe that a conveyance has been used to keep, deposit, or conceal a controlled substance shall seize the conveyance so used or intended to be used or any conveyance in which a controlled substance is unlawfully possessed by an occupant. He shall immediately deliver a conveyance that he seizes to the sheriff of the county in which the seizure is made, to be held as evidence until forfeiture is declared or release ordered.

(2) All property subject to forfeiture under [section 1] may be seized by a peace officer under a search warrant issued by a district court having jurisdiction over the property. Seizure without a warrant may be made if:

(a) the seizure is incident to an arrest or a search under a search warrant issued for another purpose or an inspection under an administrative inspection warrant;

(b) the property subject to seizure has been the subject of a prior judgment in favor of the state in a

criminal proceeding or a forfeiture proceeding based on [this act];

(c) the peace officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) the peace officer has probable cause to believe that the property was used or is intended to be used in violation of Title 45, chapter 9.

Section 4. Summary forfeiture of certain controlled substances. Controlled substances that are possessed, transferred, offered for transfer, manufactured, prepared, cultivated, compounded, or processed in violation of Title 45, chapter 9, and that are seized under the provisions of [this act] are contraband and shall be summarily forfeited to the state. Controlled substances which are seized or come into the possession of the state and the owners of which are unknown are contraband and shall be summarily forfeited to the state.

Section 5. Notice of seizure and intention to institute forfeiture proceedings. A peace officer or an officer of the seizing agency who seizes any property other than controlled substances under the provisions of [this act] shall, within 45 days of the seizure, file a notice of the seizure and intention to institute forfeiture proceedings with the clerk of the district court of

county in which the seizure occurs, and the clerk shall serve notice thereof on all owners or claimants of the property by one of the following methods:

(1) upon an owner or claimant whose right, title, or interest is of record in the division of motor vehicles, by mailing a copy of the notice by certified or registered mail to the address on the records of the division;

(2) upon an owner or claimant whose name and address are known, by mailing a copy of the notice by certified or registered mail to his last-known address;

(3) upon an owner or claimant whose address is unknown but who is believed to have an interest in the property, by publication in one issue of a newspaper of general circulation in the county where the seizure occurred or, if there is no such newspaper, by publication in one issue of a newspaper of general circulation in an adjoining county.

Section 6. Answer to allegations concerning use of property. Within 20 days after the mailing or publication of the notice, the owner or claimant of the seized property shall file a verified answer to the allegations concerning the use of the property contained in the notice of seizure and intention to institute forfeiture proceedings. No extension of the time for filing the answer may be granted, and failure to answer within 20 days bars the owner or claimant from presenting evidence at any subsequent

evidentiary hearing unless extraordinary circumstances exist.

Section 7. Procedure following answer or expiration of time for answering. (1) If a verified answer to the notice is not filed within 20 days after the mailing or publication of the notice, the court shall hear evidence on the charge of unlawful use of the property and upon motion may order the property forfeited to the state.

(2) If a verified answer is filed within 20 days, the forfeiture proceedings shall be set for hearing without a jury not less than 30 days after the answer is filed. Notice of the hearing shall be given in the manner provided for service of notice of seizure.

Section 8. Proof required or permitted at hearing. (1) At the hearing any owner or claimant who has a verified answer on file may show by competent evidence that the property was not used for the purpose charged.

(2) A claimant of a security interest in the property may prove that his security interest is bona fide and that it was created after a reasonable investigation of the moral responsibility, character, and reputation of the purchaser and without knowledge that the property was being or was to be used for the purpose charged. However, no person who has a lien dependent upon possession for compensation to which he is legally entitled for making repairs or performing

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labor upon, furnishing supplies or materials for, or providing storage, repair, or safekeeping of any property and no person doing business under any law of this state or the United States relating to financial institutions, as defined in 32-6-103, loan companies, or licensed pawnbrokers or regularly engaged in the business of selling the property or of purchasing conditional sales contracts for the property may be required to prove that his security interest was created after a reasonable investigation of the moral responsibility, character, and reputation of the owner, purchaser, or person in possession of the property when it was brought to such person.

Section 9. Disposition of property following hearing. (1) If the court finds that the property was not used for the purpose charged, it shall order the property released to the owner of record as of the date of the seizure.

(2) If the court finds that the property was used for the purpose charged, the property shall be disposed of as follows:

(a) If proper proof of his claim is presented at the hearing by the holder of a security interest, the court shall order the property released to the holder of the security interest if the amount due him is equal to or in excess of the value of the property as of the date of seizure, it being the purpose of [this act] to forfeit only

the right, title, or interest of the owner. If the amount due the holder of the security interest is less than the value of the property, the property must be sold at public auction by the sheriff of the county in which the seizure was made in the same manner provided by law for the sale of property under execution or the state may return the property to the holder of the security interest without proceeding with an auction.

(b) If no claimant exists and the confiscating agency wishes to retain the property for its official use, it may do so. If such property is not to be retained, it must be sold as provided in subsection (2)(a).

(c) If a claimant who has presented proper proof of his claim exists and the confiscating agency wishes to retain the property for its official use, it may do so provided it compensates the claimant in the amount of the security interest outstanding at the time of the seizure.

Section 10. Disposition of proceeds of sale. Whenever property is seized, forfeited, and sold under the provisions of [this act], the net proceeds of the sale must be distributed as follows:

(1) to the holders of security interests who have presented proper proof of their claims, if any, up to the amount of their interests in the property;

(2) the remainder, if any, to the county treasurer o:

the county in which the property was seized, for deposit in the county general fund, except as provided in subsection (3);

(3) if the property was seized within the corporate limits of a city or town by a law enforcement agency of that city or town, the remainder, if any, to the city or town treasurer for deposit in the city or town general fund.

-End-

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
March 9, 1979

The regular meeting of the Judiciary Committee was called to order by Chairman John Scully in room 436 of the Capitol Building at 8:00 a.m. on Friday, March 9th. All members were present except the following, who came in later, Representatives Teague, Holmes, Rosenthal, Eudaily, Daily and Representative Seifert was excused.

Scheduled for hearing were Senate Bills 348, 482 and 519. SJR 12 will be heard in the Highway Auditorium at 9:00 a.m. and the committee will then return to the Judiciary Room for hearing of two more bills, House Bill 899 and House Joint Resclution 52.

SENATE BILL NO. 519: Senator Towe. This bill would regulate electioneering on election day and provide for penalties. This was introduced as a committee bill. What it does is that two years ago in the recode bill in the Senate, on election it inadvertently repealed two sections of the law. I was amazed that we had repealed those laws and didn't realize what had happened. We have changed this to make it much narrower than the old law. He read through parts of the bill and explained. The significant part here in addition to the misdemeanor section, a successful candidate who i adjudicated guilty of violating this section may be removed from offic This was used in Harper vs Lombardy. I don't think it was intended tc be taken out, the change was in a recode bill.

MIKE MELOY: In opposition to section 2, contrary to what Senator Towe says it is patently unconstitutional. There was a case in 1948 and then there was a later case in which the Supreme Court said that you cannot stop a person from making a statement before he makes it. The law may provide a remedy and that is the doctrine of prior restraint. For that reason we would oppose the bill as it presently reads with section 2.

SENATOR TOWE: No one raised any constitutional question that the New York Times vs Sullivan would not apply.

REPRESENTATIVE KEMMIS: Talking to Mr. Meloy, I wonder if you can explain, how any criminal liability can be not of prior restraint. Discussion followed.

MR. MELOY: A political libel statute would be a more specific statement of that. Then followed discussion about the constitutionality. Several comments were made about the responsibility of the news media. Mr. Meloy said that the restraint would still be the same.

MIKE MELOY: A wrongful death action is brought by the heirs, and when the question goes to the jury the question is what would the heir lose. The key words are compensation for eassonably expected loss of income.

There was no other discussion and the hearing closed on Senate Bill No. 348.

SENATE BILL NO. 482: Senator B. Brown. This bill would provide for seizure and forfeiture of implements used in dangerous drug violations. On top of page 2, all property that is used or intended for use as a container for anyghing enumerating in subsection (1)(a) or (1)(b). He gave an example of a plane carrying drugs that had been apprehended and it was found that it was the very same plane that was confiscated by the Mexican government. He talked about the Townsend case. Then on the bottom of page 2, he discussed the federal statute.

REPRESENTATIVE DAY: The plane in Townsend was a rented one. He asked about the case and led a discussio on impounding of vehicles.

TOM HONZEL: County Attorneys. The items listed in section 2 of the bill, of those the most common would be motor vehicles or airplanes. There are some exceptions on page 2 starting on line 17, those exceptions go to common carriers. In the Senate Judiciary it was thought that we might have another are of exception, might be a small amount of Marijuana. We opposed an amendment where it would exempt small amounts of Marijuana, one killogram was accepted on the floor.

REPRESENTATIVE LORY: This is 2 and 2/10th pounds.

There was discussion about the difference between misdemeanor and felony possession of Marijuana. Sixty grams is two lids and I understand you can get 40 or 50 cigaretts out of a lid. The rest of the bill sets forth the procedure. We do have another forfeiture stuatute in Montana.

BILL ROMINE: Montana Sheriffs and Peace Officers. We do support the bill. We have a proposed amendment concerning the procedures. They are designed to protect someone who does not know a vehicle is being used for illegal drug traffic. I hope you will consider reducing the killogram.

There was no other discussion and the hearing closed on Senate Bill 482.

The meeting adjourned briefly so that the committee could go across to the Highway Auditorium for the hearing on Senate Joint Resolution 12.

JUDICIARY COMMITTEE
EXECUTIVE SESSION
March 16, 1979

The Judiciary Committee was called to order by Chairman Scully at 8:00 a.m in room 436 of the Capitol Buildin. All members were present except Representatives Conroy and Seifert.

SENATE BILL [illegible]. 21[illegible] Representative Keedy presented prepared amendments to the committee. He explained the amendments and the drafting of them. It would retain the exclusionary rule. The exclusionary rule, which requires the exclusio of otherwise admissible evidence, has consistently permitted the guilty to escape prosecution and punishment because the police have committed errors which in many cases have been technical in nature and in most cases have been made in good faith. Actual police lawlessness has seldom been deterred by the rule in cases where prosecuti have resulted since the exclusion of the evidence at trial carries no personal sanction against the police officer involved. Such police lawlessness has seldom been deterred by the rule where the police hav had goals other than the prosecution of criminals since such activity is subject to virtually no judicial scrutiny and the rule provides no remedy for the innocent victims of such lawlessness. Application of the rule often deflects the truthfinding process and often frees the guilty. The disparity in cases between the error committed by the police officer and the windfall afforded a guilty defendant by application of the rule is contrary to the idea of proportionality that is essential to the concept of justice. Although the rule is thought to deter unlawful police activity because of the respect for the fourth amendment, it may well have the opposite effect of generati disrespect for the law and administration of justice. He went on to explain the bill as his amendments would affect it and what they would do.

Representative Scully questioned subsectio 4, concerning civil liability and proof by a preponderance of evidence that there was a violation of the rights o a person protected by the fourth amendment. Some discussion followed.

Then followed discussion about the warrant and the civil damages, and further discussi about civil liability. Representative Kemmis asked about the provisio of violation. Would they be weighed one against the other.

Larry Weinberg, staff attorney, explained the new section three as used in this bill. He explained the exclusive remedy and the laws of Montana relating to search and seizure.

After much further discussion Representati Keedy moved the amendments. He stated th on page 5, it would be necessary to strike the new section in the big sheet presented to the committee and adopt the new section 11 of the

SENATE BILL NO. 271: Representative Keyser moved the amendments as presented. The motion carried with Representative Holmes and Uhde voting "no". Representative Eudaily moved to amend page 10, line 22. General discussion followed. The comment was made that this does not prevent other records from being kept which do contain prior criminal record information. Discussion about this. Representative Eudaily moved to strike "in addition to any other records". The motion carried with the vote unanimous. Representative Keyser moved "be concurred in as amended". The motion carried with the vote unanimous. Representative Uhde will carry on the floor.

SENATE BILL NO. 301: Representative Curtiss moved the amendments. It was found that all of the members did not have copies. It was decided to pass for the day and get a copy of the amentments for every member, since they are quite lengthy.

SENATE BILL NO. 404: Representative Lory moed "be concurred in". The motion carried with the vote unanimous. Representative Anderson will carry on the floor.

SENATE BILL NO. 431: Representative Lory moved to amend page 2, line 1, by striking "no" and inserting "whenever notice is required, no". The motion carried with the vote unanimous. Representative Curtiss moved "be concurred in as amended". Representative Curtiss will carry on the floor.

SENATE BILL NO. 468: Representative Holmes moved amendment #1 as presented to the committee. The motion carried with the vote unanimous. Representative Kemmis moved amendments #2 and 3. He discussed his feeling on them and explained what they would do. The motion carried with the vote unanimous. Representative Lory moved "be concurred in as amended". The motion carried with the vote unanimous. Representative Anderson will carry on the floor.

SJR 27: Representative Conroy moved "be concurred in". The motion carried with the vote unanimous. Representative Conroy will carry.

SENATE BILL NO. 482: Representative Uhde moved to amend page 1, line 4 by striking 1 kilogram and inserting 250 grams. There was considerable discussion pro and con whether this was the right amount for it to be changed to. The words would have to be amended on page 3, line 8 also. It was decided that this was the right amount and the motion carried with the vote unanimous. Representative Curtiss moved "be concurred in as amended". The motion carried with Representatives Kemmis and Holmes voting "no". Representative Curtiss will carry on the floor.

HOUSE BILL NO. 899: Representative Lory moved to table. The motion carried with the vote unanimous.

SENATE BILL NO. 65: Representative Eudaily presented copies of a statement of intent for this bill. It was agreed that as written, it was satisfactory. Representative Eudaily moved the adoption of the statemment of intent. The motion carried with the vote unanimous.

There was some discussion about why House Bill No. 899 was tabled, and finally decided that it was not needed at this time.

The meeting adjourned at 11:25 a.m.

John P. Scully, Chairman

JPS:mec

HOUSE OF REPRESENTATIVES
March 16, 1979

Judiciary Committee amendments to Senate Bill 482, third reading copy, as follows:

1. Page 1, line 24.
Following: "THAN"
Strike: "1 KILOGRAM"
Insert: "250 grams"

2. Page 3, line 8.
Following: "THAN"
Strike: "1 KILOGRAM"
Insert: "250 grams"

AND AS AMENDED BE CONCURRED IN

__ Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 482	provide for seizure & forfeiture - implements used in dangerous drug violations	2/27	B Brown	Friday 3/9	as amended be concurred	3/16
SB 491	courts not of record do not have jurisdiction - result in judgment against the state for payment of money	2/27	Turnage	Monday 3/12	be concurred	3/16
SB 495	eliminate defense of mental disease in criminal actions etc.	2/27	Towe	Tues. 3/13	table	3/20
SB 511	provide registration & protection of trademarks & service marks	2/27	Turnage	Monday 3/12	be concurred	3/14
SB 519	prohibit certain electioneering practices & provide penalties	2/27	Towe	Friday 3/9	as amended be concurred	3/17
SB 286	increase number of associate justices on S Court	3/2	S. Brown	3/13	be concurred	3/14

Total 1

Absent or not voting: Bardanouve, Day, Frates, Huennekens, Stobie.
Total 5

SECOND READING OF BILLS (COMMITTEE OF THE WHOLE)

Dussault moved that the House resolve itself into a Committee of the Whole, for the consideration of business on Second Reading. Motion carried.

Tropila in the Chair. Committee arose.

House resumed. Mr. Speaker in the Chair.

Mr. Speaker: We, your Committee of the Whole, having had under consideration business on Second Reading, recommend as follows:

That SB 224 be concurred in. (53-38)

That HJR 52 do pass. (77-13)

That SB 273, reference bill, second printing, be amended as follows: (84-0)

1. Page 2, line 2.
Strike: "county superintendent"
Insert: "trustees"

2. Page 2, lines 12 and 13.
Strike: "county superintendent"
Insert: "trustees"

3. Page 2, line 17.
Strike: "county superintendent"
Insert: "trustees"

4. Page 2, line 19.
Strike: "county superintendent"
Insert: "trustees"

5. Page 3, line 6.
Strike: "county superintendent"
Insert: "trustees"

6. Page 3, line 7.
Strike: "county superintendent"
Insert: "trustees"
Following: "for"
Strike: "his"
Insert: "their"

And as amended, be concurred in. (85-1)

That the Committee rise and report. (Tropila, Chairman). Report adopted. (81-7)

REPORTS OF STANDING COMMITTEES

BILLS (Metcalf, Chairman): 3/19/79
Correctly engrossed - HB 639.

Will be signed by the Speaker on adjournment, 3/19/79 - SB 64, SB 278, SB 314, SB 337, SB 340, SB 341, SB 342, SB 376, SB 496.

Signed by the Speaker on adjournment, 3/17/79 - SB 9, SB 10, SB 152, SB 153, SB 251, SB 293, SB 296, SB 307, SB 336, SB 339, SB 350, SB 396, SB 407, SJR 19.

Do Pass

JUDICIARY (Scully, Chairman): 3/16/79
SB 54, be concurred in. Report adopted.
SB 88, third reading copy, be amended as follows:

1. Page 3, line 7.
Following: "~~have~~"
Strike: "HAS"
Insert: "have"

2. Page 4, line 5.
Strike: "in the future"

3. Page 4, line 19.
Strike: "HEREOF"

And as amended, be concurred in. Report adopted.

SB 106, third reading copy, be amended as follows:

1. Page 1, line 14.
Following: "MORE THAN"
Strike: "$19,500"
Insert: "$22,500"

2. Page 2, line 8.
Strike: "15-18-501 THROUGH 15-18-503"
Insert: "2-18-501 through 2-18-503"

And as amended, be concurred in. Report adopted.

SB 243, be concurred in. Report adopted.
SB 250, third reading copy, be amended as follows:

1. Title, lines 4 through 9.
Following: "TO PROVIDE"
Strike: remainder of line 4 through line 9 in their entirety
Insert: "THAT A NOTICE OF BUYER'S INTEREST IN REAL PROPERTY MAY BE RECORDED WITH THE COUNTY CLERK AND RECORDER; AMENDING SECTIONS 7-4-2613 AND 7-4-2619, MCA."

2. Page 1, line 12 through line 2, page 3.
Following: "Section 1."
Strike: remainder of line 12 through line 2, page 3 in their entirety
Insert: "SECTION 7-4-2613, MCA, IS AMENDED TO READ:

'7-4-2613. Documents subject to recording. The county clerk must, upon payment of his fees for the same, record, photograph, or correctly copy, separately, in large and well-bound or to be bound separate books, either in a fair hand or by printing, typewriting, or photographic process or by the use of prepared blank forms:

(1) deeds, grants, transfers, certified copies of final judgments or decrees partitioning or affecting the title or possession of real property any part of which is situated in the county, contracts to sell or convey real estate and mortgages of real estate, releases of mortgages, powers of attorney to convey real estate, leases which have

Insert: "."

2. Page 1, line 18.
Following: line 17
Insert: "(2) (a) Whenever the decree proposed for modification does not contain provisions relating to maintenance or support, modification under subsection (1) may only be made within 2 years of the date of the decree.

(b) Whenever the decree proposed for modification contains provisions relating to maintenance or support, modification under subsection (1) may only be made:"

3. Page 1, line 18.
Following: line 17
Strike: "(a)"
Insert: "(i)"

4. Page 1, line 21.
Following: line 20
Strike: "(b)"
Insert: "(ii)"

5. Page 1, lines 22 through 25.
Strike: lines 22 through 25 in their entirety

And as amended, be concurred in. Report adopted.

SB 380, be concurred in. Report adopted.
SB 395, be concurred in. Report adopted. 3/17/79
SB 404, be concurred in. Report adopted.
SB 431, third reading copy, be amended as follows: 3/16/79

1. Page 2, line 1.
Following: "(3)"
Strike: "No"
Insert: "Whenever notice is required, no"

2. Page 2, line 3.
Strike: "the"

3. Page 2, line 4.
Strike: "referred to in subsection (1)"

And as amended, be concurred in. Report adopted.

SB 468, third reading copy, be amended as follows:

1. Page 3, line 3.
Following: "sessions"
Insert: ". Whenever the office of city judge is held by a justice of the peace, the costs imposed by this subsection are the joint responsibility of the county and the municipality, with the costs to be allocated and charged in proportion to the work done for each governmental entity. In all other cases, the costs shall be paid"

2. Page 4, line 4.
Following: "City"
Strike: "or town"

3. Page 4, line 5.
Following: "city"
Strike: "or town"

And as amended, be concurred in. Report adopted.

SB 481, third reading copy, be amended as follows: 3/17/79

1. Page 9.
Following: line 12
Insert: "Section 16. Transition. A judicial officer, as defined in 1-1-202, who is occupying his judicial office on the effective date of this act shall continue to be paid expenses on the same basis as he is receiving them on the effective date of this act until the expiration of his term of office. All judicial officers who take office or begin a new term of office after the effective date of this act shall receive expenses as provided in this act."
Renumber: subsequent sections

And as amended, be concurred in. Report adopted.

SB 482, third reading copy, be amended as follows: 3/16/79

1. Page 1, line 24.
Following: "THAN"
Strike: "1 KILOGRAM"
Insert: "250 grams"

2. Page 3, line 8.
Following: "THAN"
Strike: "1 KILOGRAM"
Insert: "250 grams"

And as amended, be concurred in. Report adopted.

SB 491, be concurred in. Report adopted.
SB 516, be concurred in. Report adopted. 3/17/79
SB 519, third reading copy, be amended as follows:

1. Page 1, line 17.
Following: "DAY"
Strike: "ONLY"
Following: "."
Insert: "Failure to remove billboards, yard signs, or posters on election day is not considered a violation."

2. Page 1, line 24.
Following: "character"
Strike: ","
Insert: "or"

3. Page 1, line 25 through line 1, page 2.
Following: "morality"
Strike: ", or integrity or which tends to injure or defeat him at the polls"

And as amended, be concurred in. Report adopted.

SJR 27, be concurred in. Report adopted.

TAXATION (Huennekens, Chairman): 3/17/79
HB 397, do pass. Report adopted.
HB 461, introduced bill, be amended as follows:

1. Page 8, line 22.
Following: "chapter"
Strike: "or who, with like intent, makes, renders, signs, or verifies any false or fraudulent return or statement or supplies any false or fraudulent information"

QUILICI
BENNETT
METCALF

LOWE
BLAYLOCK
DOVER

JOINT CONFERENCE COMMITTEE
ON SENATE BILL NO. 390
Report No. 1, March 21, 1979

Mr. President and Speaker of the House:

We, your Joint Conference Committee on Senate Bill No. 390, met on March 21, 1979, and considered:

House Committee on Business and Industry amendment dated March 7, 1979, third reading bill, and recommend as follows:

That the House recede from amendment number 1.

The reference copy of Senate Bill No. 390 read as specified in the CLERICAL INSTRUCTIONS.

And that the Conference Committee Report to Senate Bill No. 390 be adopted.

CLERICAL INSTRUCTIONS:

1. Page 7, line 18.
Following: "~~2-15-1654.~~"
Insert: "(4) The following agency terminates on July 1, 1985; the state electrical board created by 2-15-1654."

FOR THE HOUSE:

QUILICI
SCHULTZ
DOZIER

FOR THE SENATE:

LOCKREM
HIMSL
JERGESON

MESSAGES FROM THE OTHER HOUSE

The Senate on 3/22/79, dissolved the Conference Committee on Senate Amendments to House Bill No. 606 and appointed a Free Conference Committee to meet with a like committee from the House to confer on House Bill No. 606.

The President appointed the following members:

Senator Goodover, Chairman
Senator Dover
Senator Regan

The Senate on 3/22/79, dissolved the Conference Committee on Senate Amendments to House Bill No. 283 and appointed a Free Conference Committee to meet with a like committee from the House to confer on House Bill No. 283.

The President appointed the following members:

Senator Goodover, Chairman
Senator McCallum
Senator Ryan

House Bills not concurred in and returned to the House: 3/22/79

House Bill No. 338, introduced by Kemmis

House Bill No. 691, introduced by Harrington, Ramirez, Quilici, Kemmis, et al

House Bill No. 801, introduced by Meyer, Roskie

House Bills indefinitely postponed and returned to the House: 3/22/79

House Bill No. 575, introduced by Day, Galt, et al

House Bill No. 623, introduced by Kropp, Johnston, Wyrick

MOTIONS

Scully moved that SB 44, presently on Second Reading, be passed until the Sixty-ninth Legislative Day. Motion carried.

Scully moved that the House reconsider its action taken previously in passing consideration of the Senate Amendments to HB 779 to the Seventy-first Legislative Day, and that they be placed on Second Reading this day. Motion carried.

Dussault moved that SJR 31, presently on Second Reading, be passed until the Seventy-first Legislative Day. Motion carried.

Dussault moved that the House reconsider its action taken previously in passing consideration of the Senate Amendments to HJR 34 and that they be placed on Second Reading this day. Motion carried.

Dussault moved that consideration of the Senate Amendments to the following House Bills be passed until the Seventy-first Legislative Day: HB 77, HB 571, HB 759, HB 842, HB 863, HB 875. Motion carried.

Eudaily moved that SB 462, presently on Third Reading, be placed on Second Reading for the purpose of amendment. Motion carried.

Huennekens moved that the rules be suspended to allow reconsideration of the adoption of the Adverse Committee Report on HB 64, and that the House reconsider their action in adopting the Adverse Committee Report on HB 64. Motion carried. (66-21)

THIRD READING OF BILLS

The following bills having been read three several times, title and history agreed to, were disposed of in the following manner:

House Bill No. 402 was passed by the following vote:

Ayes: Anderson, Baeth, Bengtson, Bennett, Bertelsen, Brand, Conroy, Cooney, Curtiss, Daily, Dassinger, Day, Donaldson, Dozier, Dussault, Ellerd, Ernst, Fabrega, Fagg, Feda, Frates, Gilligan, Gould, Harper, Hayne, Hemstad, Hirsch, Huennekens, Iverson, Johnson, Johnston, Kanduch, Keedy, Kessler, Keyser, Kropp, Lien, Lund, McBride, Manning, Manuel, Marks, Menahan, Metcalf, Meyer, Nathe, Oberg, O'Connell, Pavlovich, Pistoria, Porter, Ramirez, H. Robbins, K. Robbins, Rosenthal, Roth, Schultz, Smith, South, Stobie, Teague, Thoft, Tropila, Uhde, Vincent, Vinger, Waldron, Williams, Wyrick, Mr. Speaker.
Total 70

Noes: Ellis, Ellison, Eudaily, Harrington, Kvaalen, Lory, Moore, Nordtvedt, Sales, Spilker, Underdal, Wood.
Total 12

Excused: Holmes, Seifert.
Total 2

Absent or not voting: Azzara, Bardanouve, Burnett, Gesek, Hand, Hurwitz, Jensen, Kemmis, Magone, Quilici, Reichert, Scully, Shelden, Sivertsen, Staigmiller, Yardley.

Ayes: Anderson, Azzara, Baeth, Bengtson, Bennett, Bertelsen, Conroy, Curtiss, Daily, Day, Donaldson, Ellerd, Ellis, Ellison, Ernst, Eudaily, Fabrega, Fagg, Feda, Gesek, Gilligan, Gould, Hand, Harrington, Hayne, Hemstad, Hirsch, Iverson, Jensen, Johnson, Johnston, Kanduch, Keyser, Kropp, Kvaalen, Lien, Lory, Lund, Magone, Manning, Manuel, Menahan, Metcalf, Meyer, Nathe, Nordtvedt, O'Connell, Pavlovich, Pistoria, Porter, Quilici, Ramirez, H. Robbins, K. Robbins, Roth, Sales, Schultz, Scully, Sivertsen, Spilker, Staigmiller, Stobie, Teague, Thoft, Tropila, Uhde, Underdal, Vincent, Vinger, Waldron, Williams, Wood, Wyrick.
Total 73

Noes: Brand, Cooney, Dassinger, Dozier, Dussault, Frates, Harper, Huennekens, Hurwitz, Keedy, Kemmis, Kessler, McBride, Marks, Moore, Oberg, Reichert, Rosenthal, Shelden, Smith, South, Mr. Speaker.
Total 22

Excused: Holmes, Seifert.
Total 2

Absent or not voting: Bardanouve, Burnett, Yardley.
Total 3

Senate Bill No. 431 was concurred in by the following vote:

Ayes: Anderson, Azzara, Baeth, Bengtson, Bennett, Bertelsen, Brand, Conroy, Cooney, Curtiss, Daily, Dassinger, Day, Donaldson, Dozier, Dussault, Ellerd, Ellis, Ellison, Ernst, Eudaily, Fabrega, Fagg, Feda, Frates, Gesek, Gilligan, Gould, Hand, Harper, Harrington, Hayne, Hemstad, Hirsch, Huennekens, Hurwitz, Iverson, Jensen, Johnson, Johnston, Kanduch, Keedy, Kemmis, Kessler, Keyser, Kropp, Kvaalen, Lien, Lory, Lund, McBride, Magone, Manning, Manuel, Marks, Menahan, Metcalf, Meyer, Moore, Nathe, Nordtvedt, Oberg, O'Connell, Pavlovich, Pistoria, Porter, Quilici, Ramirez, Reichert, H. Robbins, K. Robbins, Rosenthal, Roth, Sales, Schultz, Scully, Shelden, Sivertsen, Smith, South, Spilker, Staigmiller, Stobie, Teague, Thoft, Tropila, Uhde, Underdal, Vincent, Vinger, Waldron, Williams, Wood, Wyrick, Mr. Speaker.
Total 95

Noes: None.
Total 0

Excused: Holmes, Seifert.
Total 2

Absent or not voting: Bardanouve, Burnett, Yardley.
Total 3

Senate Bill No. 468 was concurred in by the following vote:

Ayes: Anderson, Azzara, Baeth, Bengtson, Bennett, Bertelsen, Brand, Conroy, Cooney, Curtiss, Daily, Dassinger, Day, Donaldson, Dozier, Dussault, Ellerd, Ellis, Ellison, Ernst, Eudaily, Fabrega, Fagg, Feda, Frates, Gesek, Gilligan, Gould, Hand, Harper, Harrington, Hayne, Hemstad, Hirsch, Huennekens, Hurwitz, Iverson, Jensen, Johnson, Johnston, Kanduch, Keedy, Kemmis, Kessler, Keyser, Kropp, Kvaalen, Lien, Lory, Lund, McBride, Magone, Manning, Manuel, Marks, Menahan, Metcalf, Meyer, Moore, Nathe, Nordtvedt, Oberg, O'Connell, Pavlovich, Pistoria, Porter, Quilici, Ramirez, Reichert, H. Robbins, K. Robbins, Rosenthal, Roth, Sales, Schultz, Scully, Shelden, Sivertsen, Smith, South, Spilker, Staigmiller, Stobie, Teague, Thoft, Tropila, Uhde, Underdal, Vincent, Vinger, Waldron, Williams, Wyrick, Mr. Speaker.
Total 94

Noes: None.
Total 0

Excused: Holmes, Seifert.
Total 2

Absent or not voting: Bardanouve, Burnett, Wood, Yardley.
Total 4

Senate Bill No. 481 was concurred in by the following vote:

Ayes: Anderson, Azzara, Baeth, Bengtson, Bennett, Bertelsen, Brand, Conroy, Cooney, Curtiss, Daily, Dassinger, Day, Donaldson, Dozier, Dussault, Ellerd, Ellis, Ellison, Ernst, Eudaily, Fabrega, Fagg, Feda, Frates, Gesek, Gilligan, Gould, Hand, Harper, Harrington, Hayne, Hemstad, Hirsch, Huennekens, Hurwitz, Iverson, Jensen, Johnson, Johnston, Kanduch, Keedy, Kemmis, Kessler, Keyser, Kropp, Kvaalen, Lien, Lory, Lund, McBride, Magone, Manning, Manuel, Marks, Menahan, Metcalf, Meyer, Moore, Nathe, Nordtvedt, Oberg, O'Connell, Pavlovich, Pistoria, Porter, Quilici, Ramirez, Reichert, H. Robbins, Rosenthal, Roth, Sales, Schultz, Scully, Shelden, Sivertsen, South, Spilker, Staigmiller, Stobie, Teague, Tropila, Uhde, Underdal, Vincent, Vinger, Waldron, Williams, Wyrick, Mr. Speaker.
Total 91

Noes: K. Robbins, Smith, Thoft.
Total 3

Excused: Holmes, Seifert.
Total 2

Absent or not voting: Bardanouve, Burnett, Wood, Yardley.
Total 4

Senate Bill No. 482 was concurred in by the following vote:

Ayes: Anderson, Azzara, Baeth, Bengtson, Bennett, Bertelsen, Brand, Conroy, Cooney, Curtiss, Daily, Dassinger, Day, Donaldson, Dozier, Dussault, Ellerd, Ellis, Ellison, Ernst, Eudaily, Fabrega, Fagg, Feda, Frates, Gesek, Gilligan, Gould, Hand, Harper, Harrington, Hayne, Hemstad, Hirsch, Huennekens, Hurwitz, Iverson, Jensen, Johnston, Kanduch, Keedy, Kessler, Keyser, Kropp, Kvaalen, Lien, Lory, Lund, McBride, Magone, Manning, Manuel, Marks, Menahan, Metcalf, Meyer, Moore, Nathe, Nordtvedt, Oberg, O'Connell, Pavlovich, Pistoria, Porter, Quilici, Ramirez, Reichert, H. Robbins, K. Robbins, Rosenthal, Roth, Sales, Schultz, Scully, Shelden, Sivertsen, Smith, South, Spilker, Staigmiller, Stobie, Teague, Thoft, Tropila, Uhde, Underdal, Vincent, Vinger, Waldron, Williams, Wyrick, Mr. Speaker.
Total 92

Noes: None.
Total 0

Excused: Holmes, Seifert.
Total 2

Absent or not voting: Bardanouve, Burnett, Johnson, Kemmis, Wood, Yardley.
Total 6

Senate Bill No. 491 was concurred in by the following vote:

Ayes: Anderson, Azzara, Baeth, Bengtson, Bennett, Bertelsen, Brand, Conroy, Cooney, Curtiss, Daily, Dassinger, Day, Donaldson, Dozier,

HB 509, introduced by Yardley, Fagg. Referred to Committee on Taxation.
HB 534, introduced by McBride, Fagg, Kemmis, Vincent. Referred to Committee on Rules.
HB 692, introduced by Dussault, (By Request of the Department of Social and Rehabilitation Services). Referred to Committee on Rules.
HB 754, introduced by Metcalf, Thomas, Kolstad, Hayne. Referred to Committee on Finance and Claims.
HB 760, introduced by Meyer, McCallum, Fabrega, Moore. Referred to Committee on Finance and Claims.
HB 773, introduced by Seifert, Ellison, Marks, Uhde, Anderson, Staigmiller, Burnett, Porter, Keedy. Referred to Committee on Finance and Claims.
HB 807, introduced by Roth. Referred to Committee on Finance and Claims.
HB 849, introduced by Johnson, Manuel, Marks, Fasbender. Referred to Committee on Finance and Claims.
HB 868, introduced by Waldron, Regan. Referred to Committee on Finance and Claims.
HB 894, introduced by Burnett. Referred to Committee on Finance and Claims.
HB 903, introduced by Moore, Bardanouve. Referred to Committee on Finance and Claims.
HB 905, introduced by Harrington, Daily, Quilici. Referred to Committee on Finance and Claims.
HB 913, introduced by Scully. Referred to Committee on Finance and Claims.
HJR 39, introduced by Brand, McBride, Baeth, Oberg, Hirsch, Dozier, Harrington, Galt, E. Smith, Stimatz, B. Brown, Roth, Jergeson, Story, R. Smith, H. Robbins, S. Brown, Healy, Cooney, Magone, Kanduch, Shelden, Gerke. Referred to Committee on Finance and Claims.
HB 400, introduced by Huennekens. Referred to Committee on Taxation.
HB 841, introduced by Dassinger, Conroy. Referred to Committee on Finance and Claims.
HB 848, introduced by Quilici, Menahan, Daily, Harrington, Ellerd, Pavlovich, Scully, Huennekens. Referred to Committee on Taxation.
HB 890, introduced by Brand, Ramirez, Gerke, Dussault, Blaylock, Mathers, E. Smith, Galt, Stephens, Thomas, Healy, Peterson, Stimatz, Norman, Palmer, Harrington, Staigmiller, McCallum, Oberg, H. Robbins, Roth, Menahan, Manning, Ellerd, Udhe, Cooney, Gould, Van Valkenburg, Pistoria, Dassinger, Hirsch, Meyer. Referred to Committee on Finance and Claims.
HB 906, introduced by Gerke, Dussault, Vincent, Blaylock, Jergeson. Referred to Committee on Finance and Claims.
HB 287, introduced by Huennekens. Referred to Committee on Taxation.
HB 550, introduced by Scully, Dussault, Fagg, Vincent, Ramirez, Marks. Referred to Committee on Finance and Claims.
HB 568, introduced by Scully. Referred to Committee on Taxation.
HB 643, introduced by Fabrega, (By Request of the Department of Revenue). Referred to Committee on Taxation.
HB 821, introduced by McBride, Cooney, Harrington, Baeth, Manning, Brand, Johnston, Hemstad, Quilici, Magone, Daily. Referred to Committee on Taxation.
HB 830, introduced by Burnett, Johnston, Scully, Kropp, Keyser, Lien, Marks, Thoft, Iverson, Hurwitz, Roth, Donaldson, Schultz, Ernst, Sivertsen, Wyrick. Referred to Committee on Taxation.

HB 884, introduced by Fagg, McBride, Metcalf, Holmes, Harper, Frates, Shelden, Cooney, Johnson, Harrington, Menahan, Kessler, Hemstad, Ramirez, L. Hirsch, Keedy, Fabrega, Nathe. Referred to Committee on Taxation.
HB 915, introduced by Committtee on Taxation. Referred to Committee on Taxation.
HB 916, introduced by Committee on Taxation. Referred to Committee on Taxation.

SECOND READING OF BILLS (COMMITTEE OF THE WHOLE)

Senator O'Hara in the Chair.

Senate resumed. President Mathers in the Chair.

Mr. President: We, your Committee of the Whole, having had under consideration business on Second Reading, recommend as follows:

That House Amendments to Senate Bill No. 2 be not concurred in. Opposed by Anderson, B. Brown, Dover, Galt, Graham, Hafferman, Himsl, Lowe, Manley, McCallum, Nelson, Norman, O'Hara, Rasmussen, Roskie, Severson, Story, Thomas, Turnage, Van Valkenburg.

That House Amendments to Senate Bill No. 65 be concurred in. Unanimously concurred in.

That House Amendments to Senate Bill No. 88 be concurred in. Unanimously concurred in.

That House Amendments to Senate Bill No. 106 be not concurred in. Unanimously not concurred in.

That House Amendments to Senate Bill No. 217 be not concurred in. Unanimously not concurred in.

That House Amendments to Senate Bill No. 250 be concurred in. Unanimously concurred in.

That House Amendments to Senate Bill No. 271 be concurred in. Unanimously concurred in.

That House Amendments to Senate Bill No. 284 be not concurred in. Opposed by Boylan, S. Brown, Healy, Mehrens, Peterson, Regan, Stimatz, Towe, Van Valkenburg, Watt.

That House Amendments to Senate Bill No. 291 be concurred in. Unanimously concurred in.

That House Amendments to Senate Bill No. 323 be concurred in. Unanimously concurred in.

That House Amendments to Senate Bill No. 352 be concurred in. Opposed by Towe.

That House Amendments to Senate Bill No. 356 be concurred in. Unanimously concurred in.

That House Amendments to Senate Bill No. 374 be concurred in. Unanimously concurred in.

That House Amendments to Senate Bill No. 412 be not concurred in. Opposed by Anderson, Blaylock, Conover, Fasbender, Healy, Jergeson, Norman, Regan, Towe, Van Valkenburg, Watt.

That House Amendments to Senate Bill No. 431 be concurred in. Unanimously concurred in.

That House Amendments to Senate Bill No. 468 be concurred in. Unanimously concurred in.

That House Amendments to Senate Bill No. 481 be concurred in. Unanimously concurred in.

That House Amendments to Senate Bill No. 482 be concurred in. Opposed by Boylan, S. Brown, Fasbender, Healy, Himsl, Mehrens, Olson, Palmer, Regan, Towe, Van Valkenburg.

That House Amendments to Senate Bill No. 519 be concurred in. Unanimously concurred in.

That House Amendments to Senate Bill No. 520 be concurred in. Unanimously concurred in.

That House Bill No. 150 be amended as follows:

Amendment No. 5 is amended to read:
5. Page 9, line 17.
Following: "Section 5."
Strike: remainder of line 17 through 12 on page 10
Insert: "Department of revenue — special duties for transmitting corporation license tax revenues collected from banks or savings and loan associations to counties. (1) Within 30 days after receiving corporation license tax returns and payments from banks or savings and loan associations, the department of revenue shall transmit to the county treasurer of the county in which the business is located the revenues calculated under [section 6(1) (b)]."
Renumber: subsequent subsections

Amendment No. 10 is amended to read:

2. Page 11, line 12.
Following: "collected"
Strike: "by county treasurers"
Insert: "from banks and savings and loan associations"

3. Page 12, line 7.
Following: "ONE"
Insert: "COUNTY"
Insert: "taxing jurisdiction"

4. Page 12, line 9.
Following: "THOSE"
Strike: "COUNTY"
Insert: "taxing jurisdiction"

And, as so amended, be concurred in. Opposed by Manley, Norman, Olson, Palmer.

That the Free Conference Committee Report on House Bill No. 603 be adopted. Unanimously adopted.

That the Committee rise and report. (O'Hara, Chairman)

Upon motion of Senator O'Hara, duly carried, the foregoing Report of the Committee of the Whole was adopted.

At the request of the President, and without objection, the Senate reverted to Order of Business No. 2.

REPORTS OF STANDING COMMITTEES

TAXATION (Turnage, Chairman):
HB 402 be concurred in. Report adopted.

BILLS (Dover, Chairman):
Correctly enrolled - SB 32, SB 49, SB 54, SB 132, SB 205, SB 208, SB 225, SB 243, SB 256, SB 273, SB 346, SB 377, SB 395, SB 397, SB 404, SB 409, SB 422, SB 491, SB 516, SJR 14, SJR 27. Report adopted.

I have examined Senate Bill No. 32 introduced by me and find the same to be correct. (Mathers)

I have examined Senate Bill No. 49 introduced by me and find the same to be correct. (Peterson)

I have examined Senate Bill No. 54 introduced by me and find the same to be correct. (Towe)

I have examined Senate Bill No. 132 introduced by me and find the same to be correct. (Blaylock)

I have examined Senate Bill No. 205 introduced by me and find the same to be correct. (Aklestad)

I have examined Senate Bill No. 208 introduced by me and find the same to be correct. (Hafferman)

I have examined Senate Bill No. 225 introduced by me and find the same to be correct. (Ryan)

I have examined Senate Bill No. 243 introduced by me and find the same to be correct. (Towe)

I have examined Senate Bill No. 256 introduced by me and find the same to be correct. (Lensink)

I have examined Senate Bill No. 273 introduced by me and find the same to be correct. (McCallum)

I have examined Senate Bill No. 346 introduced by me and find the same to be correct. (Towe)

I have examined Senate Bill No. 377 introduced by me and find the same to be correct. (Palmer)

I have examined Senate Bill No. 395 introduced by me and find the same to be correct. (S. Brown)

I have examined Senate Bill No. 397 introduced by me and find the same to be correct. (McCallum)

I have examined Senate Bill No. 404 introduced by me and find the same to be correct. (Kolstad)

I have examined Senate Bill No. 409 introduced by me and find the same to be correct. (Regan)

I have examined Senate Bill No. 422 introduced by me and find the same to be correct. (Hager)

I have examined Senate Bill No. 491 introduced by me and find the same to be correct. (Turnage)

I have examined Senate Bill No. 516 introduced by me and find the same to be correct. (Turnage)

Third Reading of Bill, March 29, 1979

Excused: Etchart.
Total 1

Absent or not voting: Turnage.
Total 1

House Amendments to Senate Bill No. 431 were concurred in by the following vote:

Ayes: Aklestad, Anderson, Blaylock, Boylan, B. Brown, S. Brown, Conover, Dover, Fasbender, Galt, Goodover, Graham, Hafferman, Hager, Hazelbaker, Healy, Himsl, Jergeson, Kolstad, Lensink, Lockrem, Lowe, Manley, Manning, McCallum, Mehrens, Nelson, Norman, Olson, O'Hara, Palmer, Peterson, Rasmussen, Regan, Roskie, Ryan, Severson, E. Smith, R. Smith, Stephens, Stimatz, Story, Thiessen, Thomas, Towe, Turnage, Van Valkenburg, Watt, Mr. President.
Total 49

Noes: None.
Total 0

Excused: Etchart.
Total 1

Absent or not voting: None.
Total 0

House Amendments to Senate Bill No. 468 were concurred in by the following vote:

Ayes: Aklestad, Anderson, Blaylock, Boylan, B. Brown, S. Brown, Conover, Dover, Fasbender, Galt, Goodover, Graham, Hafferman, Hager, Hazelbaker, Healy, Himsl, Jergeson, Kolstad, Lensink, Lockrem, Lowe, Manley, Manning, McCallum, Mehrens, Nelson, Norman, Olson, O'Hara, Palmer, Peterson, Rasmussen, Regan, Roskie, Ryan, Severson, E. Smith, R. Smith, Stephens, Stimatz, Story, Thiessen, Thomas, Towe, Turnage, Van Valkenburg, Watt, Mr. President.
Total 49

Noes: None.
Total 0

Excused: Etchart.
Total 1

Absent or not voting: None.
Total 0

House Amendments to Senate Bill No. 481 were concurred in by the following vote:

Ayes: Aklestad, Anderson, Blaylock, Boylan, B. Brown, S. Brown, Conover, Dover, Fasbender, Galt, Goodover, Graham, Hafferman, Hager, Hazelbaker, Healy, Himsl, Jergeson, Kolstad, Lensink, Lockrem, Lowe, Manley, Manning, McCallum, Mehrens, Nelson, Norman, Olson, O'Hara, Palmer, Peterson, Rasmussen, Regan, Roskie, Ryan, Severson, E. Smith, R. Smith, Stephens, Stimatz, Story, Thiessen, Thomas, Towe, Turnage, Van Valkenburg, Watt, Mr. President.
Total 49

Noes: None.
Total 0

Excused: Etchart.

Total 1

Absent or not voting: None.
Total 0

House Amendments to Senate Bill No. 482 were concurred in by the following vote:

Ayes: Aklestad, Anderson, Blaylock, Boylan, B. Brown, S. Brown, Conover, Dover, Fasbender, Galt, Goodover, Graham, Hager, Hazelbaker, Healy, Himsl, Jergeson, Kolstad, Lensink, Lockrem, Lowe, Manley, Manning, McCallum, Mehrens, Nelson, Norman, O'Hara, Palmer, Peterson, Rasmussen, Roskie, Ryan, Severson, E. Smith, R. Smith, Stephens, Stimatz, Story, Thiessen, Thomas, Turnage, Watt, Mr. President.
Total 44

Noes: Hafferman, Olson, Regan, Towe, Van Valkenburg.
Total 5

Excused: Etchart.
Total 1

Absent or not voting: None.
Total 0

House Amendments to Senate Bill No. 519 were concurred in by the following vote:

Ayes: Aklestad, Anderson, Blaylock, Boylan, B. Brown, S. Brown, Conover, Dover, Fasbender, Galt, Goodover, Graham, Hafferman, Hager, Hazelbaker, Healy, Himsl, Jergeson, Kolstad, Lensink, Lockrem, Lowe, Manley, Manning, McCallum, Mehrens, Nelson, Norman, Olson, O'Hara, Palmer, Peterson, Rasmussen, Regan, Roskie, Ryan, Severson, E. Smith, R. Smith, Stephens, Stimatz, Story, Thiessen, Thomas, Towe, Turnage, Van Valkenburg, Watt, Mr. President.
Total 49

Noes: None.
Total 0

Excused: Etchart.
Total 1

Absent or not voting: None.
Total 0

House Amendments to Senate Bill No. 520 were concurred in by the following vote:

Ayes: Aklestad, Anderson, Blaylock, Boylan, B. Brown, S. Brown, Conover, Dover, Fasbender, Galt, Goodover, Graham, Hafferman, Hager, Hazelbaker, Healy, Himsl, Jergeson, Kolstad, Lensink, Lockrem, Lowe, Manley, Manning, McCallum, Mehrens, Nelson, Norman, Olson, O'Hara, Palmer, Peterson, Rasmussen, Regan, Roskie, Ryan, Severson, E. Smith, R. Smith, Stephens, Stimatz, Story, Thiessen, Thomas, Towe, Turnage, Van Valkenburg, Watt, Mr. President.
Total 49

Noes: None.
Total 0

Excused: Etchart.
Total 1

SENATE BILL NO. 482

INTRODUCED BY B. BROWN

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR SEIZURE AND FORFEITURE OF CONTROLLED SUBSTANCES AND IMPLEMENTS AND CONVEYANCES USED IN DANGEROUS DRUG VIOLATIONS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definition of controlled substance. As used in [this act], "controlled substance" means any substance designated as a dangerous drug pursuant to [Title 50, chapter 32, parts 1 and 2].

Section 2. Things that are subject to forfeiture. (1) The following are subject to forfeiture:

(a) all controlled substances that have been manufactured, distributed, prepared, cultivated, compounded, processed, or possessed in violation of Title 45, chapter 9;

(b) all money, raw materials, products, and equipment of any kind that are used or intended for use in manufacturing, preparing, cultivating, compounding, processing, delivering, importing, or exporting any controlled substance in violation of Title 45, chapter 9, EXCEPT ITEMS USED OR INTENDED FOR USE IN CONNECTION WITH QUANTITIES OF MARIJUANA IN AMOUNTS LESS THAN ~~1 KILOGRAM~~ 250 GRAMS;

(c) EXCEPT AS PROVIDED IN SUBSECTION (2)(D), all property that is used or intended for use as a container for anything enumerated in subsection (1)(a) or (1)(b);

(d) except as provided in subsection (2), all conveyances, including aircraft, vehicles, and vessels:

(i) which are used or intended for use in unlawfully transporting or in any manner facilitating the transportation of anything enumerated in subsection (1)(a) or (1)(b) for the purpose of sale or receipt of such thing;

(ii) in which a controlled substance is unlawfully kept, deposited, or concealed; or

(iii) in which a controlled substance is unlawfully possessed by an occupant; and

(e) all books, records, and research products and materials, including formulas, microfilm, tapes, and data, that are used or intended for use in violation of Title 45, chapter 9.

(2) (a) No conveyance used by a person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of Title 45, chapter 9.

(b) No conveyance is subject to forfeiture under this section because of any act or omission established by the

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owner of the conveyance to have been committed or omitted without his knowledge or consent.

(c) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to any violation of Title 45, chapter 9.

(D) NO CONVEYANCE OR CONTAINER IS SUBJECT TO FORFEITURE UNDER THIS SECTION IF IT WAS USED OR INTENDED FOR USE IN TRANSPORTING LESS THAN ~~1 KILOGRAM~~ 250 GRAMS OF MARIJUANA.

Section 3. When property may be seized. (1) A peace officer who has probable cause to make an arrest for a violation of Title 45, chapter 9, probable cause to believe that a conveyance has been used or is intended to be used to unlawfully transport a controlled substance, or probable cause to believe that a conveyance has been used to keep, deposit, or conceal a controlled substance shall seize the conveyance so used or intended to be used or any conveyance in which a controlled substance is unlawfully possessed by an occupant. He shall immediately deliver a conveyance that he seizes to the sheriff of the county in which the seizure is made, to be held as evidence until forfeiture is declared or release ordered.

(2) All property subject to forfeiture under [section 1] may be seized by a peace officer under a search warrant

issued by a district court having jurisdiction over the property. Seizure without a warrant may be made if:

(a) the seizure is incident to an arrest or a search under a search warrant issued for another purpose or an inspection under an administrative inspection warrant;

(b) the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal proceeding or a forfeiture proceeding based on [this act];

(c) the peace officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) the peace officer has probable cause to believe that the property was used or is intended to be used in violation of Title 45, chapter 9.

Section 4. Summary forfeiture of certain controlled substances. Controlled substances that are possessed, transferred, offered for transfer, manufactured, prepared, cultivated, compounded, or processed in violation of Title 45, chapter 9, and that are seized under the provisions of [this act] are contraband and shall be summarily forfeited to the state. Controlled substances which are seized or come into the possession of the state and the owners of which are unknown are contraband and shall be summarily forfeited to the state.

Section 5. Notice of seizure and intention to institute forfeiture proceedings. A peace officer or an officer of the seizing agency who seizes any property other than controlled substances under the provisions of [this act] shall, within 45 days of the seizure, file a notice of the seizure and intention to institute forfeiture proceedings with the clerk of the district court of the county in which the seizure occurs, and the clerk shall serve notice thereof on all owners or claimants of the property by one of the following methods:

(1) upon an owner or claimant whose right, title, or interest is of record in the division of motor vehicles, by mailing a copy of the notice by certified or registered mail to the address on the records of the division;

(2) upon an owner or claimant whose name and address are known, by mailing a copy of the notice by certified or registered mail to his last-known address;

(3) upon an owner or claimant whose address in unknown but who is believed to have an interest in the property, by publication in one issue of a newspaper of general circulation in the county where the seizure occurred or, if there is no such newspaper, by publication in one issue of a newspaper of general circulation in an adjoining county.

Section 6. Answer to allegations concerning use of property. Within 20 days after the mailing or publication of

the notice, the owner or claimant of the seized property shall file a verified answer to the allegations concerning the use of the property contained in the notice of seizure and intention to institute forfeiture proceedings. No extension of the time for filing the answer may be granted, and failure to answer within 20 days bars the owner or claimant from presenting evidence at any subsequent evidentiary hearing unless extraordinary circumstances exist.

Section 7. Procedure following answer or expiration of time for answering. (1) If a verified answer to the notice is not filed within 20 days after the mailing or publication of the notice, the court shall hear evidence on the charge of unlawful use of the property and upon motion may order the property forfeited to the state.

(2) If a verified answer is filed within 20 days, the forfeiture proceedings shall be set for hearing without a jury not less than 30 days after the answer is filed. Notice of the hearing shall be given in the manner provided for service of notice of seizure.

Section 8. Proof required or permitted at hearing. (1) At the hearing any owner or claimant who has a verified answer on file may show by competent evidence that the property was not used for the purpose charged.

(2) A claimant of a security interest in the property

may prove that his security interest is bona fide and that it was created after a reasonable investigation of the moral responsibility, character, and reputation of the purchaser and without knowledge that the property was being or was to be used for the purpose charged. However, no person who has a lien dependent upon possession for compensation to which he is legally entitled for making repairs or performing labor upon, furnishing supplies or materials for, or providing storage, repair, or safekeeping of any property and no person doing business under any law of this state or the United States relating to financial institutions, as defined in 32-6-103, loan companies, or licensed pawnbrokers or regularly engaged in the business of selling the property or of purchasing conditional sales contracts for the property may be required to prove that his security interest was created after a reasonable investigation of the moral responsibility, character, and reputation of the owner, purchaser, or person in possession of the property when it was brought to such person.

Section 9. Disposition of property following hearing. (1) If the court finds that the property was not used for the purpose charged, it shall order the property released to the owner of record as of the date of the seizure.

(2) If the court finds that the property was used for the purpose charged, the property shall be disposed of as

follows:

(a) If proper proof of his claim is presented at the hearing by the holder of a security interest, the court shall order the property released to the holder of the security interest if the amount due him is equal to or in excess of the value of the property as of the date of seizure, it being the purpose of [this act] to forfeit only the right, title, or interest of the owner. If the amount due the holder of the security interest is less than the value of the property, the property must be sold at public auction by the sheriff of the county in which the seizure was made in the same manner provided by law for the sale of property under execution or the state may return the property to the holder of the security interest without proceeding with an auction.

(b) If no claimant exists and the confiscating agency wishes to retain the property for its official use, it may do so. If such property is not to be retained, it must be sold as provided in subsection (2)(a).

(c) If a claimant who has presented proper proof of his claim exists and the confiscating agency wishes to retain the property for its official use, it may do so provided it compensates the claimant in the amount of the security interest outstanding at the time of the seizure.

Section 10. Disposition of proceeds of sale. Whenever

property is seized, forfeited, and sold under the provisions of [this act], the net proceeds of the sale must be distributed as follows:

(1) to the holders of security interests who have presented proper proof of their claims, if any, up to the amount of their interests in the property;

(2) the remainder, if any, to the county treasurer of the county in which the property was seized, for deposit in the county general fund, except as provided in subsection (3);

(3) if the property was seized within the corporate limits of a city or town by a law enforcement agency of that city or town, the remainder, if any, to the city or town treasurer for deposit in the city or town general fund.

-End-